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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

MATTHEW ELVEY, an individual, and
GADGETWIZ, INC., an Arizona
corporation, on their own behalf and on
behalf of all others similarly situated,

Plaintiffs

v.

TD AMERITRADE, INC., a New York
corporation, and DOES 1 to 100,

Defendants.

Case No. C 07 2852 MJJ

**STIPULATED [~~PROPOSED~~] ORDER
CONTINUING HEARING DATE ON
MOTIONS TO DISMISS AND FOR
PRELIMINARY INJUNCTION**

Judge: Martin J. Jenkins

GROUND

1. Plaintiffs Matthew Elvey and Gadgetwiz.com filed a First Amended Complaint against Defendant TD Ameritrade, Inc. ("TD Ameritrade"), on June 28, 2007, and Motion for Preliminary Injunction and Class Certification on July 10, 2007.

2. TD Ameritrade filed a Motion to Dismiss the Plaintiffs' First Amended Complaint on July 18, 2007.

1 3. On July 20, 2007, the parties filed a stipulated proposed order extending the
2 briefing schedules and continuing the hearing date for the Motions to September 18, 2007, and
3 the Court approved the stipulated proposed order on July 26, 2007. The parties' respective
4 Motions are presently scheduled to be heard by the Court at 2 p.m. on September 18, 2007.

5 4. TD Ameritrade filed a Motion for Extension of Time to File Opposition to
6 Plaintiffs' Motion for Preliminary Injunction and Class Certification on August 22, 2007,
7 asserting that there was a significant development in its internal investigation of possible
8 unauthorized acquisition of customer e-mail addresses from its computer systems, and that this
9 development may significantly affect its arguments in opposition to Plaintiffs' Motion for
10 Preliminary Injunction.

11 5. Plaintiffs opposed TD Ameritrade's Motion for Extension of Time on the grounds
12 that the Motion did not set forth with particularity the reasons for the extension, as required
13 under Civil L.R. 6-3(a)(1). Plaintiffs filed their opposition to the Motion for Extension of Time
14 on August 23, 2007.

15 6. The Court denied TD Ameritrade's Motion for Extension of Time on August 23,
16 2007.

17 7. The parties recently completed negotiating the stipulated protective order, and the
18 Court approved and entered the stipulated protective order on September 5, 2007.

19 8. Pursuant to the protective order, TD Ameritrade has since provided Plaintiffs
20 further information that clarified the basis for its prior request for an extension described in
21 Paragraph 4. Based on this clarification, the Parties believe that the sharing of further
22 information coupled with an in-person meeting between the parties prior to the hearing on the
23 Motion for Preliminary Injunction regarding the subject matter of the Motion for Preliminary
24 Injunction serves each parties' respective interests, as well as the interests of judicial economy.

25 9. The earliest date the parties' respective counsel can schedule such a meeting is
26 September 17, 2007, in the New York area.

10. Therefore, the parties believe that all interests involved (including the Court's) would be best served by continuing the hearing date for two weeks.

STIPULATION

1. IT IS HEREBY STIPULATED, pursuant to Local Rule 6-2, that Plaintiffs' Motion for Preliminary Injunction and TD Ameritrade's Motion to Dismiss shall both be set for October 2, 2007 at 9:30 a.m. in Courtroom 11, 19th Floor, 450 Golden Gate Ave., San Francisco, CA 94102.

2. IT IS FURTHER STIPULATED that this stipulation shall not be construed to reflect the position of any of the parties concerning the urgency or absence of any urgency of the relief sought in the Motion for Preliminary Injunction.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Date: September 10, 2007

By: /s/ Alan Himmelfarb

Alan Himmelfarb

Counsel for Plaintiffs Matthew Elvey and
Gadgetwiz, Inc.

Date: September 10, 2007

By: /s/ Lee H. Rubin

Lee H. Rubin

Mayer Brown LLP

Counsel for Defendant

TD AMERITRADE, Inc.

Filer's Attestation: Pursuant to General Order No. 45, Section X(B), Shirish Gupta hereby attests that the signatories' concurrence in the filing of this document has been obtained.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: 9/11/07

By: _____

THE HONORABLE
UNITED STATES

